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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

| | |
|---|---|
| CLRB HANSON INDUSTRIES, LLC d/b/a INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and all others similarly situated, | CASE NO: C05-03649 JW |
| Plaintiffs, | **DECLARATION OF MICHELE F. RAPHAEL IN OPPOSITION TO DEFENDANT GOOGLE INC.'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL** |
| vs. | |
| GOOGLE, INC., | Civ. L.R. 7-11<br>Civ. L.R. 79-5 |
| Defendant. | Courtroom: 8<br>Judge: Hon. James W. Ware |

Dockets.Justia.com

I, **MICHELE F. RAPHAEL**, declare as follow:

1. I am a member of Wolf Popper LLP, counsel for Plaintiffs CLRB Hanson Industries, LLC d/b/a Industrial Printing and Howard Stern (collectively, "Plaintiffs") in this action against Google, Inc ("Google"). I have personal knowledge of the facts stated herein. I submit this declaration in opposition to Defendant Google Inc.'s administrative motion pursuant to Civil Local Rules 7-11 and 79-5 to file under seal, Google Inc.'s Supplemental Brief in Support of Summary Judgment Motion and Supplemental Declaration of M. Christopher Jhang in support of Google Inc.'s Supplemental Brief in Support of Summary Judgment Motion (including Exhibits A-D) (collectively, "Defendant's Supplemental Filings").

2. Defendant seeks to file Defendant's Supplemental Filings wholly under seal largely because they have designated the entire deposition transcripts of Mssrs. Schulman and Venkataraman as confidential. A copy of Defendant's designation letter is annexed hereto as Exhibit A.

3. Plaintiffs object to Defendant's blanket designation of the transcripts of Mssrs. Schulman and Venkataraman as improper and contrary to the [Proposed] Stipulated Protective Order Regarding Confidential Information, filed with the Court on March 2, 2007 (the "Parties [Proposed] Stipulated Protective Order"). Paragraph 4 thereof explicitly prohibits blanket, en masse designations without regard to the specific contents of each document or piece of information.

4. Illustrative of the impropriety of Defendant's blanket confidential designation is testimony addressing Mr. Schulman's preparation for his deposition, his understanding that he has to respond orally at his deposition; whether he read anyone else's deposition transcript; whether he was asked to provide documents with respect to the case; whether he searched his files for documents; his education background; his title and physical location at Google; and questions concerning his Declaration which Defendant chose to submit and publicly file with the Court, as well as the discussions concerning Mr. Stern's declaration which was also publicly filed with the Court.

5. Defendant has similarly and improperly designated confidential testimony concerning Mr. Venkataraman's preparation for his deposition; his educational background; his employment history; the location of his office at Google; the number of floors in the Google building; whether he knows what a billing period is; and whether he has taught classes at a university. This too, is illustrative, and not an exhaustive reiteration of the testimony that has been improperly designated confidential.

6. A copy of Plaintiff's counsel's letter objecting to Defendant's confidential designations is annexed hereto as Exhibit B.

7. In addition to the foregoing, Google's witnesses repeatedly testified that the AdWords program is a "dynamic" and "evolving" system so that information that may have qualified as confidential in the past (which Plaintiffs do not submit), may no longer, in good faith, be designated confidential in 2007.

8. Defendant has not demonstrated good cause to justify the filing of the aforementioned documents under seal. Little, if any, information qualifies as confidential material as per the Parties [Proposed] Stipulated Protective Order.

9. Due to Defendant's confidential designations, Plaintiffs were required to file under seal, portions of Plaintiffs' Supplemental Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment and portions of the Supplemental Declaration of Michele F. Raphael dated May 3, 2007 (collectively, "Plaintiffs' Supplemental Filings") as required by the Parties' [Proposed] Stipulated Protective Order.

10. Defendant should make a good faith effort to designate as confidential and/or confidential-trade secret/attorney's eyes only those portions of the deposition testimony and other evidence which qualifies as such pursuant to the Parties' [Proposed] Stipulated Protective and Fed. R. Civ. Pro. 26 (c). Then, if, and to the extent, Defendant continues to maintain that it is necessary to file under seal any portion of, Defendant's Supplemental Filings (or Plaintiffs' Supplemental Filings), such request should be narrowly tailored to protect from the public record, only those portions which constitute trade secrets, proprietary information, and/or

confidential information, which, if not sealed and permitted in the public record, would prejudice Google or cause Google to suffer irreparable harm.

Dated: May 10, 2007

/s/
Michele F. Raphael